

108TH CONGRESS  
2D SESSION

# S. 2497

To amend the securities laws to provide for enhanced mutual fund investor protections, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 3, 2004

Mr. LIEBERMAN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the securities laws to provide for enhanced mutual fund investor protections, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Small Investor Protec-  
5       tion Act of 2004”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act—

8               (1) the term “Chairman” means the Chairman  
9       of the Securities and Exchange Commission;

1           (2) the terms “broker”, “dealer”, and “securi-  
 2           ties” have the same meanings as in section 3 of the  
 3           Securities Exchange Act of 1934;

4           (3) the term “Commission” means the Securi-  
 5           ties and Exchange Commission; and

6           (4) the term “individual investors” means non-  
 7           professional, noninstitutional investors, as a class,  
 8           including small investors.

9   **SEC. 3. DIVISION OF THE INVESTOR.**

10          (a) ESTABLISHMENT.—There is established within  
 11          the Commission the Division of the Investor.

12          (b) DIRECTOR.—

13               (1) APPOINTMENT.—The Division of the Inves-  
 14               tor shall be headed by a Director, who shall be ap-  
 15               pointed by the Commission from among individuals  
 16               who have—

17                       (A) a demonstrated commitment to the  
 18                       rights and interests of individual investors and  
 19                       to the public interest;

20                       (B) experience in advocating for, edu-  
 21                       cating, or otherwise assisting individual inves-  
 22                       tors; and

23                       (C) knowledge of the financial markets.

1           (2) REPORT TO CHAIRMAN.—The Director of  
 2           the Division of the Investor shall report directly to  
 3           the Chairman.

4           (c) DUTIES OF THE DIVISION.—The duties of the Di-  
 5 vision of the Investor shall be—

6           (1) to serve as an advocate for individual inves-  
 7           tors by—

8           (A) assessing and advocating for the inter-  
 9           ests of individual investors;

10          (B) providing views to the Commission and  
 11          Commission staff as to whether policy proposals  
 12          and proposed rules effectively serve, and, if ap-  
 13          propriate, how they can better serve, the inter-  
 14          ests of individual investors;

15          (C) identifying areas of concern to indi-  
 16          vidual investors that may warrant or benefit  
 17          from Commission action;

18          (D) conducting qualitative and quantitative  
 19          research to determine the information and other  
 20          needs of individual investors; and

21          (E) serving as a liaison between investor  
 22          advocacy organizations and the Commission,  
 23          and developing processes to receive meaningful  
 24          input from such organizations and from indi-  
 25          vidual investors;

1           (2) to assist and educate individual investors by  
2     performing the functions performed on the day be-  
3     fore the effective date of this Act by the Director of  
4     the Office of Investor Education and Assistance  
5     (previously known as the Office of Consumer Af-  
6     fairs), as set forth in section 200.24a of title 17 of  
7     the Code of Federal Regulations, as in effect on the  
8     effective date of this Act, including—

9           (A) developing and disseminating edu-  
10    cational materials to individual investors;

11          (B) receiving, tracking, and analyzing com-  
12    plaints from individual investors about entities  
13    regulated by the Commission, and transmitting  
14    to other offices and divisions within the Com-  
15    mission and to the Commission itself relevant  
16    information from such individual investors; and

17          (C) providing information to individual in-  
18    vestors concerning entities regulated by the  
19    Commission, the operation of the securities  
20    markets, and the functions of the Commission;  
21    and

22          (3) to perform other functions to promote the  
23    interests of individual investors, as the Chairman de-  
24    termines appropriate.

1 (d) SMALL INVESTORS.—In carrying out this section,  
2 the Division of the Investor shall pay particular attention  
3 to the needs and interests of small investors.

4 (e) VIEWS ON PROPOSED RULES.—Whenever the  
5 Commission proposes a new rule or an amendment to an  
6 existing rule, or otherwise solicits public comment on a  
7 matter of importance to individual investors, the Director  
8 of the Division of the Investor shall prepare a written sum-  
9 mary of the Division’s views on the proposed rule or other  
10 matter, and the Commission shall include the summary  
11 in its Notice of Proposed Rulemaking or other public solie-  
12 itation of comments.

13 **SEC. 4. OFFICE OF RISK ASSESSMENT.**

14 (a) ESTABLISHMENT.—There is established within  
15 the Commission the Office of Risk Assessment.

16 (b) DIRECTOR.—

17 (1) APPOINTMENT.—The Office of Risk Assess-  
18 ment shall be headed by a Director, who shall be ap-  
19 pointed by the Commission from among individuals  
20 who have—

21 (A) demonstrated experience in public and  
22 private risk analysis or in uncovering and inves-  
23 tigating financial fraud or other financial mis-  
24 conduct, or both;

1 (B) knowledge of the financial markets;  
 2 and

3 (C) demonstrated commitment to the pub-  
 4 lic interest.

5 (2) REPORT TO CHAIRMAN.—The Director of  
 6 the Office of Risk Assessment shall report directly to  
 7 the Chairman.

8 (c) DUTIES OF THE OFFICE.—The duties of the Of-  
 9 fice of Risk Assessment shall be—

10 (1) to assess industry practices within the juris-  
 11 diction of the Commission to identify any risks asso-  
 12 ciated with those practices that could most likely  
 13 harm investors and the public;

14 (2) to develop strategies to address and miti-  
 15 gate any such risks, and prevent or lessen the poten-  
 16 tial harm to investors and the public;

17 (3) to coordinate risk assessment and risk man-  
 18 agement activities throughout the Commission; and

19 (4) to prepare annual reports to the Commis-  
 20 sion assessing areas that potentially pose the most  
 21 significant risks to investors during the 3-year pe-  
 22 riod following submission of each such report.

23 (d) USE OF INFORMATION.—In performing its duties  
 24 under this section, the Office of Risk Assessment shall  
 25 seek and make use of information from a wide range of

1 sources, both within and outside of the Commission, in-  
 2 cluding securities filings, information gathered in compli-  
 3 ance inspections and examinations, consumer complaints,  
 4 tips from individuals working within publicly traded cor-  
 5 porations or the securities industry, academic research,  
 6 and relevant information from industry and other sources,  
 7 consistent with applicable privacy and other laws.

8 **SEC. 5. CONSUMER RESEARCH.**

9 (a) IN GENERAL.—Whenever it considers requiring  
 10 significant disclosures to investors, whether in advertising,  
 11 on web sites, or in documents required by law or regula-  
 12 tion, the Commission shall consider and give weight to em-  
 13 pirical evidence as to whether the proposed disclosure as  
 14 a whole, including its wording, its format, the context and  
 15 location in which it appears, and the timing and manner  
 16 of its dissemination, is likely to meaningfully improve un-  
 17 derstanding by individual investors to assist them in mak-  
 18 ing wise financial decisions, and whether alternative dis-  
 19 closures would be more effective in improving investor un-  
 20 derstanding.

21 (b) TYPES OF EVIDENCE.—Empirical evidence re-  
 22 ferred to in subsection (a)—

23 (1) may be qualitative or quantitative;

1           (2) should be of a type that relevant experts  
 2           would consider competent and reliable evidence of  
 3           the understanding of average investors; and

4           (3) may include evidence developed by the Com-  
 5           mission or by others.

6 **SEC. 6. FUND SUMMARIES.**

7           (a) SUMMARIES REQUIRED.—

8           (1) IN GENERAL.—Section 12 of the Investment  
 9           Company Act of 1940 (15 U.S.C. 80a–12) is amend-  
 10          ed by adding at the end the following:

11          “(h) SUMMARIES REQUIRED FOR OPEN-END COMPA-  
 12          NIES.—It shall be unlawful for an open-end registered in-  
 13          vestment company to offer its securities for sale, unless,  
 14          prior to completion of the sale, it provides to investors a  
 15          summary of relevant characteristics of the investment, in-  
 16          cluding information on expenses, risk, and diversification,  
 17          and any other information that the Commission deter-  
 18          mines will assist investors in making wise financial deci-  
 19          sions.”.

20          (2) EFFECTIVE DATE.—Section 12(h) of the In-  
 21          vestment Company Act of 1940, as added by para-  
 22          graph (1) of this subsection, shall become effective  
 23          on the earlier of—

24                  (A) the effective date of regulations issued  
 25                  under subsection (c); or



1 (B) 1 year after the date of enactment of  
2 this Act.

3 (b) STUDY.—The Commission shall conduct a study,  
4 including usability testing where appropriate, to deter-  
5 mine—

6 (1) the information most likely to assist average  
7 mutual fund investors in making wise financial deci-  
8 sions; and

9 (2) the best media and format in which to  
10 present such information so as to ensure that it is  
11 readily accessible and understandable to average in-  
12 vestors.

13 (c) IMPLEMENTING REGULATIONS.—Not later than  
14 1 year after the date of enactment of this Act, the Com-  
15 mission shall issue final regulations implementing the re-  
16 quirements of section 12(h) of the Investment Company  
17 Act of 1940, as added by subsection (a), and specifying  
18 the content and format of the summary required under  
19 that section 12(h), consistent with the findings of the  
20 Commission in the study conducted under subsection (b),  
21 except that such summary shall not exceed in length the  
22 equivalent of 4 printed pages of text.

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